

REMARKS

Upon entry of the above amendment, claims 1, 3 and 5 will have been amended and claim 2 will have been canceled. Claims 1 and 3-6 are currently pending. In view of the herein contained amendments and remarks, Applicants respectfully request reconsideration and withdrawal of the outstanding rejections together with an indication of the allowability of all of the claims in the present application, in due course.

Initially, Applicants would like to express their appreciation to the Examiner for the detailed Official action provided.

Applicants also acknowledge with appreciation the indication that claims 3, 4 and 6 contain allowable subject matter on the Office Action Summary and on page 3 of the Official action.

Applicants note that claim 3, which the Examiner has indicated as containing allowable subject matter, has been rewritten in independent form to include the subject matter of claim 1 as previously presented, and to overcome the rejection under 35 U.S.C. §112, second paragraph, by removal of the “asymmetrically” language (as discussed below). Further, claims 4 and 6 depend from claim 3. Accordingly, Applicants respectfully request an early indication of the allowability of claims 3, 4 and 6.

In the Official Action the Examiner rejected claims 1-6 under 35 U.S.C. §112, second paragraph, as being indefinite with regard to the phrase

“asymmetrically with respect to the side surfaces”. Claim 1 has been amended to remove the “asymmetrical” description. Accordingly, Applicants respectfully submit that the rejection under 35 U.S.C. §112, second paragraph is improper, and respectfully request reconsideration and withdrawal of the rejection, and an early indication of allowance of these claims.

In the Official Action the Examiner rejected claims 1, 2 and 5 under 35 U.S.C. §102(e) as being anticipated by CROZET et al. (United States Patent No. 6,527,803) hereinafter referred to as CROZET.

Applicants respectfully traverse the 35 U.S.C. §102(e) rejection and submit that it is inappropriate with respect to the claims pending in the present application for at least the following reasons. Applicants note that claim 2 has been canceled.

Applicants note that an aspect of the present invention provides an intervertebral cage as recited in the claim 1, including, inter alia, “withdrawal prevention portions...being formed along with a plurality of cutting lines slanting at a predetermined angle with respect to one of the side surfaces of the main body”.

Applicants submit that CROZET lacks any disclosure of *a plurality of cutting lines slanting at a predetermined angle with respect a side surface of a main body*. In this regard, although CROZET discloses a plurality of saw-toothed or zigzag teeth, having continuous mutually parallel edges (Col. 3, lines 28-30), Applicants note that CROZET does not disclose such teeth as *slanting at a predetermined angle with respect to a side surface of the main body*. To the

contrary, the plurality of saw-toothed or zigzag teeth of CROZET are clearly oriented at right angles with respect to side surfaces 8 of the main body (see FIG. 1). In this regard, Applicants note that CROZET refers to the surfaces 8 as "side faces". Applicants submit that the truncated corner portion through which the duct 14 passes in CROZET can not reasonably be characterized as a "side surface" of the main body.

A further aspect of the present invention provides an intervertebral cage, as recited in the claim 1, including, inter alia, "withdrawal prevention portions formed on the upper and lower surfaces of the main body ...wherein the withdrawal prevention portions regulate an insertion direction of the intervertebral cage". The present invention accomplishes this by forming claw portions at a predetermined slanting angle with respect to the side surfaces of the intervertebral cage (*see specification* Page 6, lines 4-8).

Applicants submit that CROZET lacks any disclosure of *withdrawal prevention portions formed on the upper and lower surfaces of the main body and which regulate an insertion direction of the intervertebral cage*. In this regard, it appears that the implant of CROZET may be inserted from any direction, because, while in their "retracted position" the pins 26 are retracted so that they do not significantly impede installation of the implant between the vertebral bodies (Col. 4, lines 49-52). In contrast, the intervertebral cage of the present invention may be regulated in an insertion direction perpendicular to the cutting lines (see FIGS. 8A & 8D). In this exemplary embodiment, the intervertebral cage can be inserted in either a left direction or a right direction

depending on which surface of the upper and lower surfaces are faced upward (see *specification* Page 6, lines 4-14). Applicants note that the Examiner has provided no explanation regarding how *regulation of an insertion direction of the implant* could occur in CROZET.

Applicants also submit that dependent claim 5, which is at least patentable due to its dependency from claim 1 for the reasons noted above, recites additional features of the invention and is also separately patentable over the prior art of record.

Applicants respectfully submit that the rejection of claims 1 and 5 under 35 U.S.C. § 102(e) is improper at least for each and certainly for all of the above-noted reasons. Accordingly, Applicants respectfully request reconsideration and withdrawal of the rejection, and an early indication of the allowance of all of the pending claims.

Thus, it is respectfully submitted that all of the claims in the present application are clearly patentable over the references cited by the Examiner, either alone or in combination, and an indication to such effect is respectfully requested, in due course.

SUMMARY

Applicants submit that the present application is in condition for allowance, and respectfully request an indication to that effect. Accordingly, entry of the present amendments, reconsideration of the outstanding Official Action and allowance of the present application and all the claims therein are respectfully requested and is now believed to be appropriate.

Any amendments to the claims which have been made in this amendment, and which have not been specifically noted to overcome a rejection based upon the prior art, should be considered to have been made for a purpose unrelated to patentability, and no estoppel should be deemed to attach thereto.

Should the Examiner have any questions, the Examiner is invited to contact the undersigned at the below-listed telephone number.

Respectfully submitted,
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